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August 18, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 5, 2004

Case Number: TSO-0149

This decision concerns the eligibility of XXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy (DOE) security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether the Individual's access authorization should be restored.¹ For the reasons stated below, the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Alcohol Abuse. Both of the expert witnesses who testified at his hearing agree that this diagnosis is accurate. DOE Exhibit 7 at 3; Transcript of Hearing (Tr.) at 8, 10, 31. Both expert witnesses also agree that the Individual is now sufficiently reformed and rehabilitated to resolve the security concerns raised by his alcohol abuse. Tr. at 31, 37, 53, 54.

The events leading to this proceeding began when DOE officials received information indicating that the Individual had been arrested for Driving While Intoxicated (DWI) for the second time. On September 18, 2003, a personnel security interview (PSI) of the Individual was conducted by a representative of the LSO. A transcript of this PSI appears in the Record as Exhibit 11. The Individual was then asked to submit to a forensic psychiatric examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On February 13, 2004 the DOE Psychiatrist conducted an examination of the Individual. Tr. at 7. On February 13, 2004, the DOE Psychiatrist issued a

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

report in which he stated that the Individual meets the criteria for Alcohol Abuse. DOE Psychiatrist's Report of Examination at 3. The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by his Alcohol Abuse. *Id.*

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, other licensed physician or a licensed clinical psychologist as . . . suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented five witnesses: three friends and co-workers, his ex-girlfriend and a Clinical Psychologist/Neuropsychologist (the Psychologist). The Individual also testified on his own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol abuse raises significant security concerns under Criteria J. In the present case, the Individual does not dispute this diagnosis. Therefore, the LSO properly invoked these criteria.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO- 0244)*, 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). In the present case, the Individual does not dispute the DOE Psychiatrist's diagnosis of alcohol abuse. Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of his rehabilitation or reformation to resolve the security concerns raised by his alcohol abuse.

Two expert witnesses testified at the hearing and both experts agreed that the Individual has been sufficiently reformed and rehabilitated to resolve the security concerns raised by his alcohol abuse. Moreover, the Individual has recognized that he has an alcohol problem and discontinued his use of alcohol. Specifically, the record indicates that the Individual has abstained from using alcohol since February 14, 2004.² Tr. at 43.

The Psychologist testified at the hearing on behalf of the Individual. His testimony indicated that he had conducted a thorough psychological evaluation of the Individual, which included a clinical interview of the Individual and the administration of two standardized psychological tests, the Minnesota Multiphasic Personality Inventory - Second Edition (MMPI-2) and the Substance Abuse Susceptibility Subtle Indicators (SASSI-3). After evaluating the results of the interview and testing, the Psychologist concluded that the Individual was properly diagnosed with alcohol abuse. Tr. at 31-32. However, the Psychologist further testified that he believed the Individual's assertion that he has abstained from using alcohol for over a year. Tr. at 32, 37. The Psychologist noted that both the MMPI and the SASSI-3 contain questions designed to determine the test taker's forthrightness, and the Individual's responses on those tests indicated that he was being forthright about his alcohol problem. Tr. 33-36. The test results and the Individual's clinical interview convinced the Psychologist that the Individual was honest about his alcohol consumption and recognized he had a problem with alcohol. Tr. at 36. According to the Psychologist, the Individual's abstention from the use of alcohol for a period in excess of one year is "clinically significant," since an Individual's ability to abstain from drinking for a year is one of the best predictors of future behavioral control. Tr. at 33. Accordingly, the Psychologist testified that the Individual is now "in a recovery phase." Tr. at 31-32, 37-38.

The DOE Psychiatrist testified that at the time that he had examined the Individual and prepared his report, in February of 2004, the Individual was still using alcohol, despite being enrolled in a court mandated alcohol education program. At the hearing, the DOE Psychiatrist observed the testimony of the Individual and the Psychologist. The DOE Psychiatrist was then called back to

²At the time of the Hearing, the Individual had abstained from using alcohol for a period of 14 months.

the stand. At this point the DOE Psychiatrist testified that the Individual now meets the DSM-IV's criteria for remission. Tr. at 52. The DOE Psychiatrist also noted that the Individual has made behavioral changes as well. Tr. at 53. Finally, the DOE Psychiatrist testified that the Individual had been sufficiently reformed and rehabilitated. Tr. at 53, 54.

In summary, both expert witnesses have testified that the Individual is properly diagnosed with alcohol abuse and has shown he is rehabilitated and reformed. Accordingly, he has successfully resolved the security concerns raised by his alcohol abuse.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criteria J. Therefore, the Individual has demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: August 18, 2005